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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,064	05/08/2001	Peter Lisec	L57-362002-pUS	9161

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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 08/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/850,064

Applicant(s)

LISEC, PETER

Examiner

Jeff H. Aftergut

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1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent 3634793.

German Patent taught that it was known at the time the invention was made to provide a step or removed portion (chamfer) of a tubular element and butt weld the so formed portions of tubular members together in order to provide a welded joint for a window frame which has an outer surface which appears uniform and even.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of German Patent 3634793 and any one of E.P. 546,854, E.P. 662,389 or PCT WO 88/06966 optionally further taken with Lemelson.

The admitted prior art taught that it was known at the time the invention was made to join two tubular profiles together in the construction of a window spacer frame wherein the tubular members were joined in a welding operation. The admitted prior art suggested that during the

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welding operation a weld bead was formed on the inner surface of the welded tubular members and that this would have been undesirable when making a spacer frame for a window. To avoid the same, the applicant herein has provided the profiles with a machined out portion on the edge of the profile in order to better control and/or eliminate the formation of a bead on the exterior of the profile member.

German Patent '793 suggested that one skilled in the art of manufacturing a welded window profile which was butt welded to provide a chamfer of the tubular members being welded wherein one was able to eliminate the formation of a bead in the welded assembly. The abstract of the reference suggested that the profile materials were thermoplastic materials and it failed to make mention of the use of a machining (cutting) operation for forming the chamfer. It should be noted that the admitted prior art suggested that the window frame members being joined would have been known to have been constructed from aluminum and that these aluminum profiles were joined together via butt welding. The problem identified was the formation of the bead. German Patent '793 in a butt welding operation of profiles for a window suggested that the beads be eliminated by providing a chamfer in the profile in the region where the butt weld was to take place so that during the welding operation when the pieces were brought together the plastic material would have flowed into the chamfer and bead would not have been formed. The reference identified the same problem and suggested an identical solution and thus one would have reasonably expected that processing the aluminum tubes in the same fashion as the plastic profiles of the German Patent would have achieved the same result (the elimination of the bead).

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The references to any one of E.P. 546,854, E.P. 662,389 or PCT WO 88/06966 suggested that it was known at the time the invention was made to machine and/or cut a chamfer in the ends of a tube prior to joining the same together in order to eliminate the bead formed on the interior of the so welded tubes. The applicant is referred to E.P. 546,854 at page 3, lines 52-53, for example, E.P. 662,389 at column 4, lines 55-58, for example, or PCT WO 88/06966 at the abstract. Clearly, it was well known at the time the invention was made to incorporate tubular profiles with chamfers which were cut into the tubes (machined) in order to provide one with a tubular profile which was ready for welding wherein the bead formed on the surface would have been eliminated (note that in each of the references to E.P. 546,854, E.P. 662,389 or PCT WO 88/06966 the machining of the tubes was to eliminate the weld bead formed after the welding operation). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of any one of E.P. 546,854, E.P. 662,389 or PCT WO 88/06966 to machine out the chamfer in the tubular members of German Patent 3634793 wherein the tubular members would have been provided with the chamfers in order to eliminate the weld beads formed in the admitted prior art.

While, as addressed above, one would have reasonably expected to have employed the techniques of German Patent 3634793 in the admitted prior art and achieved success whether the profiles utilized were plastic or aluminum, to further evidence that those skilled in the art were well aware that the techniques suggested by German Patent 3634793 would have been applicable to the aluminum tubes of the admitted prior art, the reference to Lemelson is cited. Lemelson suggested that it was known to use similar techniques for welding the ends of either metal or plastic tubes together (column 1, lines 13-17). Clearly, those skilled in the art of making tubular

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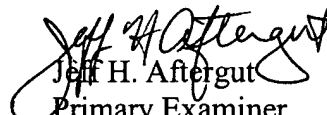
members would have known at the time the invention was made to incorporate similar techniques when welding the tubes together whether the tubular material was formed from plastic or aluminum. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of any one of E.P. 546,854, E.P. 662,389 or PCT WO 88/06966 to machine out the chamfer in the tubular members of German Patent 3634793 wherein the tubular members would have been provided with the chamfers in order to eliminate the weld beads formed in the admitted prior art as the welding techniques used to weld plastic tubes together would have been understood to have been useful for welding aluminum tubular members together as well as evidenced by Lemelson.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
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JHA

August 2, 2002